Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	)	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

COMMENTS OF SPRINT NEXTEL CORPORATION

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COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation, pursuant to the Order on Remand and Report and Order and Further Notice of Proposed Rulemaking released November 5, 2008 (FCC 08-262), hereby respectfully submits its comments in the above-captioned proceedings on comprehensive reform of the rules governing intercarrier compensation and Universal Service Fund (USF) contributions and distributions.

I. INTRODUCTION AND SUMMARY.

The time to act is now. After years -- even decades – of excruciatingly detailed analysis of whether and how to reform the intercarrier compensation and USF regimes, the Commission now has before it variations of a broad reform item. This item is not perfect; it is not even comprehensive.[1] It undoubtedly inflicts pain on various parties. But it is critically important to the development of a competitive telecommunications industry, and with adjustments, it can form the basis of a more rational system of intercarrier compensation and targeted, technologically and competitively neutral universal service support. If consumers are to enjoy the tremendous benefits of a competitive telecommunications industry – new services, more versatile handsets, improved coverage, more attractive rates and calling plans, better customer service – in all parts of the Nation, the Commission must reform intercarrier compensation and universal service rules *now*.

Sprint Nextel recommends that the Commission adopt an order which incorporates the following elements:

- Reduces terminating intercarrier compensation rates for transport and termination to a single, statewide "additional cost" level within five years, not the painfully slow ten-year transition contained in the appendices.

- Implements triggers and certifications to discourage traffic pumping schemes during the transition to "additional cost" terminating rates.

- Clarifies that under existing law, IP-enabled services are not subject to access charges or to the blended inter/intrastate rate that applies during the transition to the unified "additional cost" terminating rate, and that telecommunications providers of IP-enabled services retain all of their existing rights to UNEs, numbering resources, and interconnection under §§ 251 and 252 of the Act, regardless of the regulatory classification of these services.

- Commits to address special access reform within six months after the adoption of an initial order to address intercarrier compensation reform.

[1] A comprehensive reform package would encompass special access, originating switched access, and transit rates. Sprint Nextel urges the Commission to take up these issues to reduce the rates for these services to just and reasonable levels.

- Reaffirms that transit is an obligation under § 251(c)(2) and considers the application of the "additional" cost standard to transit rates.
- Rejects asymmetric compensation relating to CMRS providers' ability to charge terminating access, and to the "rural transport carve-out."
- Adopts certain standards relating to grant of "suspensions and modifications" of small LECs' §251 obligations under §251(f)(2).
- "Right sizes" the federal high-cost USF to help ensure that it is sustainable and competitively and technologically neutral. This exercise requires that the Commission carefully examine distributions to all recipients, not just competitive entrants attempting to bring new services to consumers, and that it avoid the temptation to turn the high-cost fund into a revenue guarantee or "make whole" fund to protect incumbents from the pressures of competition.
- Provides competitive carriers with a reasonable opportunity to justify their receipt of high-cost universal service support.
- Adopts a numbers/connections-based USF contribution methodology for both residential and business customers.

II. INTERCARRIER COMPENSATION REFORM SHOULD BE IMPLEMENTED OVER A FIVE-YEAR TRANSITION PERIOD.

The Appendix A and C versions of the draft item both propose a transition to "additional cost"-based rates over a ten-year period. Sprint Nextel strongly supports the Commission's efforts to bring terminating access rates to such level, and believes that the cost standard proposed in these appendices (the Faulhaber standard) is both legally required by the clear language of the Telecommunications Act of 1996, and economically rational and appropriate. However, the ten-year transition period is excessive (especially given the twelve years that have elapsed since passage of the 1996 Act) and, given the myriad of severe regulatory arbitrage problems and the rapid shift to IP technology, offers far too little too late.

The transition to Faulhaber-based rates should occur over a maximum of five years as follows: intrastate terminating switched access charges reduced to interstate levels within 12 months from adoption of the order in two equal steps at the 6 and 12 month marks; blended rates reduced to reciprocal compensation levels within 24 months from adoption of the order in two equal steps at the 18 and 24 month marks; reciprocal compensation rates reduced to Faulhaber-based rates within 60 months from adoption of the order, in three equal steps at the 36, 48, and 60 month marks. Five years constitutes a reasonable and achievable transition period, and the final terminating rates will promote numerous public interest benefits.

A. Terminating Rates Can and Should Be Reduced to "Additional Cost" Levels Within Five Years.

The Commission has accurately described the problems associated with the existing intercarrier compensation regimes (*see, e.g.*, Appendix A of the draft item, ¶¶ 178-185), and has emphasized the need to "unify and simplify the myriad intercarrier compensation systems in existence today" in order to encourage efficient use of the network, realign cost recovery in response to competition, and promote technological advancements (*id.*, ¶¶ 157 and 159). In order for these goals to be achieved, the Commission must, consistent with Section 252(d)(2) of the Act, bring terminating rates to an "additional cost" level, based on Faulhaber economic principles, within a maximum of five years.

A five rather than ten-year transition period is critical for several reasons. First, as all parties acknowledge, the current intercarrier compensation system has spawned numerous severe regulatory arbitrage problems which in turn have generated costly billing disputes and inefficient traffic routing and network design. These arbitrage problems will continue so long as there is an artificial difference in rates based on jurisdiction or service type and so long as compensation exceeds additional cost.

Prolonging the pre-1996 monopoly-era access charge system for four more years, and then allowing six more years until compensation reflects additional cost means that intercarrier compensation will not be fully consistent with the 1996 Act until 2019, nearly a quarter of a century after Congress adopted Sections 251(b)(5) and 252(d)(2) as the appropriate pro-competitive compensation mechanism and pricing standard for all telecommunications. Continuing the market distorting effects of inflated access rates and the inevitable attendant schemes for ten more years is clearly contrary to the public interest. If the Commission genuinely intends to promote the interests of all consumers over the interests of specific companies, it must subject all telecommunications to the statutory reciprocal compensation standard of §251(b)(5) under the "additional cost" standard of §252(d)(2) (or adopt bill-and-keep) within five years.

Second, the industry is rapidly moving to IP-based networks and technology,[2] and it is likely that the industry will be largely IP within a few years. The intercarrier compensation reform plan at issue in the instant proceeding is focused on circuit-switched networks, circuit-switched costs, and circuit-switched rate elements. If the intercarrier compensation reforms now being debated are to be relevant, and the benefits of those reforms are to be realized, the reforms must be implemented far more quickly than over a ten-year timeframe.

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[2] *See, e.g., Universal Service Contribution Methodology, Report and Order and Notice of Proposed Rulemaking*, 21 FCC Rcd 7518, 7520 (¶ 19) (2006) (noting "robust" growth in interconnected VoIP subscribership); *TIA 2008 Telecommunications Market Review and Forecast* (estimating that the U.S. VoIP residential market trebled over the last two years to 15.9 million connections, and forecasting a 20% compound growth rate over the next four years).

Third, a long transition period is simply unnecessary. The intercarrier compensation reforms under consideration in the instant proceeding are hardly new news. Carriers were first put on notice over a dozen years ago when Congress passed the Telecommunications Act of 1996, and, somewhat more recently (in 2001), with the initiation of the Commission's unified intercarrier compensation proceeding (CC Docket No. 01-92). The record in that proceeding must surely have involved the decimation of several large forests. The industry (including local exchange carriers whose rates are most directly implicated by the proposed reforms) has thus been aware of and has been preparing for such reforms for over twelve years now. Indeed, a five-year transition period would not constitute a particular hardship for the largest local exchange carriers. Sprint Nextel estimates that AT&T and Verizon – which represent 75% of ILEC access lines – can recover 100% of the revenue reductions associated with lower intercarrier compensation rates by increasing their subscriber line charges (SLC) to the proposed new caps.[3]

B. The Faulhaber Standard Appropriately Estimates "Additional Cost" as Required by the Statute.

In the Appendix A (¶¶ 236-273) and C (¶¶ 231-271) versions of the draft item, the Commission has proposed that terminating rates ultimately be set using a forward-looking, long-run incremental cost standard ("Faulhaber rates"). The Faulhaber approach identifies "the additional forward-looking cost that a network would incur if it provided an additional service" (*see, e.g.*, Appendix A, ¶ 251). Faulhaber cost studies are to use

[3] The Commission has proposed to increase residential and single-line business SLCs to $8.00, and multiline business SLCs to $11.50. *See, e.g.*, Appendix A, ¶ 298.

"the least cost, most efficient network technology" and must "exclude all common costs, including overhead cost" (*id.*, ¶¶ 272-273).

Although Sprint Nextel continues to believe that bill-and-keep is the most efficient approach to intercarrier compensation (not least because it obviates the need to do cost studies at all), it endorses the Faulhaber standard as the most appropriate costing standard for a Calling Party Network Pays (CPNP) regime, and believes that the methodology set forth by the Commission here satisfies the additional cost requirement specified in Section 252(d)(2)(a) of the Act. As the Commission has correctly explained (*see, e.g.*, Appendix A, ¶¶ 265-267), the Faulhaber cost standard is more rational from an economic perspective than TELRIC rates, and is supported by record evidence submitted by Sprint Nextel, three Intercarrier Compensation Forum economists, and AT&T (*id.*, ¶¶ 254-257).

C. Immediate Action to Curtail Traffic Pumping Is Critical.

The Commission has developed an extensive record on the serious problems associated with traffic pumping,[4] and has unequivocally concluded that traffic pumping schemes allow LECs engaging in such schemes to earn and retain unlawful rates of return.[5] As the Commission recognized in the instant proceeding, the "Access Stimulation problem" is yet another example of regulatory arbitrage which needs to be addressed through intercarrier compensation reform.[6]

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[4] *See, e.g., In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers,* WC Docket No. 07-135.
[5] *See In the Matter of Qwest Communications Corp., Complainant, v. Farmers and Merchants Mutual Telephone Co., Defendant,* File No. EB-07-MD-001, *Memorandum Opinion and Order* released October 2, 2007 (FCC 07-175), ¶¶ 21-25.
[6] *See, e.g.*, Appendix A at ¶ 185, Appendix C at ¶ 180.

Sprint Nextel is cautiously optimistic that at the end of the intercarrier compensation reform transition period, when terminating rates are appropriately set at Faulhaber-based levels (or when bill-and-keep arrangements are in place), many types of traffic pumping are likely to disappear since these schemes make no financial sense if the terminating rate is set at or close to zero.[7] However, until the end of the transition period, traffic pumping – which to date has involved billions of minutes and hundreds of millions of dollars in disputed charges for those schemes which have been identified – is likely to continue, largely unabated, unless the Commission takes action to curb these abuses.

Given the vast amount of traffic pumping havoc that can be wrought over a five-year (much less a ten-year) transition period to cost-based terminating rates, it is critical that the Commission act immediately to curtail the deleterious effects of traffic pumping. Specifically, the Commission should adopt trigger and certification safeguards such as those recommended by Sprint Nextel.[8] These safeguards can be easily implemented using information readily available to all local exchange carriers, are not unreasonably burdensome, and, most importantly, will help bring the rates charged by these carriers closer to just and reasonable levels.

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[7] However, Sprint Nextel is concerned that traffic pumping schemes centering around other excessively priced, non-cost-based rates (such as for transit service) will proliferate.

[8] *See, e.g.*, comments filed by Sprint Nextel in WC Docket No. 07-135 on December 17, 2007. To minimize the impact of these safeguards on LECs that do not engage in traffic pumping, Sprint Nextel subsequently refined its proposal to limit CLEC certifications to those carriers that base their rates on either the rural benchmark or the rural exemption (*see* Sprint Nextel *ex parte* letter dated August 21, 2008 in WC Docket No. 07-135). Sprint Nextel would emphasize that these safeguards reduce, but do not eliminate, the incentive of certain LECs to engage in traffic pumping. The only truly effective way to eliminate traffic pumping is to reduce applicable rates to zero (bill-and-keep) or to the §252(d)(2) additional cost pricing standard.

If, contrary to Sprint Nextel's recommendations (*see* Section III.A.2 below), the Commission decides to guarantee the revenue streams of certain LECs by giving them additional USF subsidies, it must at a minimum exclude all minutes associated with traffic pumping schemes from the base of minutes on which the revenue guarantee is based.[9] To guarantee for some open-ended period of time the revenues associated with pumped minutes adds insult to injury by rewarding those LECs that have engaged in these schemes, may encourage or embolden other LECs to begin such practices, would egregiously inflate the total subsidy dollars, and is patently contrary to the public interest.

D. The Commission Must Clarify the Treatment of IP-Enabled Services.

One of the great benefits of a unified intercarrier compensation regime is that it moots disputes over what rate applies to different types of traffic – all types of traffic are assessed the same rate, regardless of legacy jurisdictional type or service classification. During the transition to a unified rate, however, parties will continue to dispute what compensation applies to IP-enabled services. Because the regulatory classification of IP-enabled services has been unsettled for several years now, the Commission should clarify that access charges do not, and never have, applied to this traffic, and that wholesale telecommunications carriers providing service to VoIP service providers retain all of their existing rights to interconnection, numbering resources, and unbundled network elements (UNEs).

In the Appendix A (¶ 209) and C (¶ 204) versions of the draft item, the Commission proposes to classify IP/PSTN services as information services because such

[9] For example, if a LEC had 1 million minutes of use in 2008, of which 950,000 were associated with traffic pumping, any revenue guarantee to that LEC would be computed

Footnote continued on next page

traffic involves a net protocol conversion between end users. Such a finding would lead to the (appropriate) conclusion that IP/PSTN traffic is not and never has been subject to access charges,[10] and the Commission should explicitly state that retroactive application of access charges to IP/PSTN traffic is prohibited. The Commission should also clarify that until the end-state unified rate is achieved, IP/PSTN traffic should remain subject to Section 251(b)(5)/252(d)(2) compensation.[11]

If the Commission declares IP/PSTN traffic to be an information service, it should also affirm that wholesale telecommunications carriers providing service to VoIP service providers retain all of their existing rights under Section 251. The Commission's Wireline Competition Bureau has previously found that "wholesale telecommunications carriers are entitled to interconnect and exchange traffic with incumbent local exchange carriers (LECs) when providing services to other service providers, including voice over Internet Protocol (VoIP) service providers, pursuant to sections 251(a) and (b) of the Communications Act...."[12] To avoid any future disputes on this matter, the Commission should reaffirm that telecommunications carriers providing service to VoIP service providers on a wholesale basis retain all of their existing rights to interconnection,

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on its 50,000 legitimate minutes of use.

[10] Under existing rules, enhanced/information services are not subject to access charges.

[11] *See, e.g.*, comments filed by Sprint Nextel on February 19, 2008 in WC Docket No. 08-8, *Petition of the Embarq Local Operating Companies for Limited Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Rule 69.5(a), 47 U.S.C. § 251(b), and Commission Orders on the ESP Exemption.*

[12] *In the Matter of Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, WC Docket No. 06-55, *Memorandum Opinion and Order* released March 1, 2007 (DA 07-707), ¶ 1.

numbering resources, and UNEs, regardless of the regulatory classification of IP/PSTN services.

E. The Commission Should Reaffirm that Transit is an Obligation Under Sections 251(c)(2) and 252(d)(1), and Apply the "Additional Cost" Standard to Transit Rates.

Most of the focus of the intercarrier compensation reform proposals here has been on transport and termination. However, the Commission should not overlook transit services – the transport of traffic between networks. At a minimum, the Commission should reaffirm that provision of transit services is an ILEC obligation under §251(c)(2), subject to §252(d)(1) pricing standards. The Commission also should expand intercarrier compensation reform to transit rates, and evaluate whether application of the Faulhaber-based "additional cost" methodology to transit services is consistent with the statute and the public interest.

Given the structure of circuit switched networks, tandems are likely to remain the default point of interconnection for termination of circuit switched traffic, including voice traffic originated in IP format, for the foreseeable future. Even when IP format predominates, the obligations of §§ 251(b)(5) and 251(c) should continue to be available for the exchange of voice IP traffic.

The rules proposed by the Commission are found in Appendix A at ¶ 275 and Appendix C at ¶ 270. These rules deal with interconnection at the edge of the terminating carrier's network. The responsibility of paying for transport to the terminating carrier's network is placed on the interexchange carrier (IXC) or, for local calls, on the originating LEC. Appendix C goes one step further and unreasonably shifts responsibility for paying for both originating and terminating transport outside of the service area of a rural rate-of-return LEC to the IXC.[13]

Sprint Nextel previously pointed out that the Verizon and AT&T proposal on which the rules in Appendix A ¶ 275 and Appendix C ¶ 270 are based is silent on the issue of cost standards to be applied to interconnection facilities used to exchange transit traffic.[14] Given that tandem facilities create a natural bottleneck in the circuit switched network and given that ILECs are the primary suppliers of tandem facilities, Sprint Nextel is concerned that ILECs will exercise their market dominance in this area to continue to charge unreasonable prices unless the Commission establishes a reasonable pricing mechanism and ensures that future networks benefit from the interconnection scheme established by §251(b)(5) of the Act.

Sprint Nextel encourages the Commission to make it clear that all transit and transport services are subject to the pricing discipline of sections 251 and 252 of the Act, including transit services currently being provided under interstate access tariffs. The Commission should adopt the same "additional cost" (Faulhaber-based) uniform pricing standard for interconnection and transit facilities that it has proposed for terminating switching and transport facilities.

An ILEC tandem that is used for termination of a call between that ILEC's customer and an originating carrier is the same tandem that is used when transit traffic is presented for termination to a third-party terminating carrier subtending the ILEC's

[13] *See* Section II.F below. Meet point arrangements may be continued between ILECs rather than strict use of the edge of the network (*see* Appendix C, ¶ 270).
[14] *See ex parte* Communication from Charles W. McKee, Sprint Nextel, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92 at 2 (filed Oct. 17, 2008).

tandem. Likewise, the transport facilities of an ILEC that are used for termination of a call between an ILEC customer and an originating carrier are the same facilities that are used when transit traffic is presented for termination to a third-party terminating carrier. The "additional cost" of either type of terminating call using these facilities is identical. Yet, the Act allows different pricing methodologies to be used in development of the rates that may be applied by the ILECs.

Section 252(d)(1) of the Act provides that the cost for interconnection and network element charges shall be "(A)(i) based on the cost (determined without reference to rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit." In §252(d)(2)(A)(2)(ii), the Act provides that charges for transport and termination of traffic terms and conditions are only reasonable when "such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls." The TELRIC cost standard has been used up to this point in time to establish compliance with §252(d)(1).

The Commission, after rejecting TELRIC and its allocation of common costs as an appropriate pricing standard going forward, has now proposed a pricing system for §252(d)(2) services that is based on "additional cost." The inputs to the §252(d)(2) and §252(d)(1) services are the same. The only additional guidance on pricing systems between §252(d)(2) and §252(d)(1) is that §252(d)(1) pricing is required to be "nondiscriminatory" and "may include a reasonable profit." There is no requirement that TELRIC continue as the pricing standard for either section or that common costs be allocated to services provided under either section. In order to meet the "nondiscriminatory" pricing test, where the same inputs are used under both sections, the same costing standard should be used.

Sprint Nextel notes that the Faulhaber-based "additional cost" methodology includes a profit component. Thus, use of a Faulhaber-based methodology to determine interconnection rates would satisfy the "reasonable profit" provision of §252(d)(1)(B); would be "nondiscriminatory"; and would be efficient in that only one cost proceeding would be required to meet the needs of both §§252(d)(1) and (d)(2), should the Commission decide to move away from TELRIC pricing for traffic subject to §252(d)(1).

The Commission has proposed to reduce all access charges to interstate levels, then to a uniform state-wide price, then to a statewide "additional cost" level. Currently, tandem switching and common transport rates are significantly above even the bloated UNE TELRIC rates which the Commission is proposing to modify. AT&T's rates are 161% of TELRIC, Verizon's are 203% of TELRIC and Qwest's are 182% of TELRIC.[15] There is currently nothing in either Appendix A or Appendix C that makes it clear that these rates are not to continue far into the future.

Sprint Nextel endorsed the use of state-specific TELRIC prices for these services as an interim rate.[16] TELRIC would work well as the target cap for the first step of the phase down of access charges for these services. The price for tandem switching and common transport services could be rapidly phased down to TELRIC. Then, mirroring the cost studies showing "additional cost", the §252(d)(1) services should be phased

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[15] *Id.* at Exhibit B.
[16] *Id.* at 3.

down to "additional cost." Optimally, the applicability of both §251 and §252 should be made clear in this context.

F. Asymmetric Compensation Should be Rejected.

Although the Commission professes concern about ensuring symmetry (*see, e.g.*, Appendix A, ¶ 276), its intercarrier compensation proposal contains two glaring examples of unreasonable asymmetry:

- CMRS terminating charges - CMRS providers are prohibited from charging for calls that terminate on their networks until the final unified rate has been implemented (Appendix A, ¶ 197; Appendix C, ¶ 192). This prohibition obviously does not apply to LECs.
- Rural transport carve-out (Appendix C, ¶ 270) – A rural rate-of-return ILEC is responsible for transport of calls originated by its customers to the non-rural terminating carrier's point of presence only within the rural rate-of-return ILEC's service area. Responsibility for *all* transport beyond the rural rate-of-return ILEC's service area (that is, both for calls that the non-rural carrier is terminating, and those that the rural rate-of-return carrier is originating) is assigned to the non-rural terminating carrier.

As discussed below, both of these examples of asymmetric regulation are unreasonably discriminatory and should be rejected.

As the Commission has noted (*see, e.g.*, Appendix A, ¶ 197), CMRS carriers today are not allowed to tariff access charges for traffic terminating to their networks – they are forced to provide this service free of charge even though they must pay wireline carriers up to several cents per minute for traffic terminated on the wireline carrier's network. Because the Commission has proposed to forbid any carrier from increasing its rates during the transition to unified "additional cost"-based rates, it has prohibited CMRS carriers from charging for terminating access until the end of the transition period (*id.*). This is an unreasonable proposition, and should not be adopted.

CMRS carriers have long been and continue to be at a competitive and financial disadvantage as a result of the requirement that they must pay wireline carriers for, but may not charge for, terminating access traffic. Unless the transition period is shortened as proposed, the Commission should eliminate the asymmetry immediately by allowing CMRS carriers to collect compensation at the same level permitted wireline carriers. At a minimum, the Commission should allow CMRS carriers to begin assessing reciprocal compensation rates for traffic terminating on their networks at the initiation of phase two of the transition to unified rates. At this phase of the transition, access charges disappear and minutes are no longer distinguishable as access traffic, and the prohibition on CMRS access tariffs becomes moot.

The proposal in Appendix C to allow rural rate-of-return ILECs to shift their transport obligations to other carriers also should be rejected. The Commission does not cite to any record evidence to support this proposal, nor does it attempt to quantify the dollar impact of this proposal. Certainly, there is no economic rationale for allowing this inter-carrier subsidy; all carriers should be responsible for transporting traffic to the point of interconnection of the terminating carrier. In fact, rate-of-return ILECs pay for transport and tandem switching outside their exchange boundaries for long distance calls for which they are the interexchange carrier,[17] and there is no reason why the same should not apply for all of their traffic. It would be arbitrary and capricious to allow an originating carrier to impose its transport burden onto another carrier merely because the

[17] Most ILECs, including rate-of-return ILECs, offer long distance service to their subscribers. ILECs generally enter into agreements with wholesale IXCs for the resale of the long distance service. The IXC passes on the transport and tandem switch costs to the

Footnote continued on next page

originating carrier is a rural rate-of-return ILEC. Such a shift in transport obligation is not only anti-competitive; it also violates §51.703(b) of the Commission's Rules, which prohibits a LEC from "assess[ing] charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network" (47 C.F.R. §51.703(b)). Particularly given that this rule has been upheld by the Courts,[18] the Commission would have to justify carefully and completely any deviation from the rule. As no such justification has been provided, the Commission must reject the proposal.

G. The Commission Should Adopt Standards to Govern "Suspensions and Modifications" for Small Carriers Under Section 251(f)(2).

Under §251(f)(2) of the Act, LECs with fewer than 2% of the Nation's subscriber lines may petition a State commission for a suspension or modification of their §251 obligations. The Commission should adopt several standards to govern requests for suspensions/modifications under §251(f)(2):

- That any §251(f)(2) suspension or modification be limited in duration (Appendix A, ¶ 283 and Appendix C, ¶ 278). This requirement is consistent with the language of the Act, and with the requirement that the LEC must demonstrate that its requested suspension or modification is appropriate (rather than shifting the burden on a competitive carrier to prove that a suspension or modification should be lifted).
- That the LEC be subject to a timeline by which it must comply with the §251 obligation once the suspension or modification is lifted. Compliance efforts should be made during the suspension/modification period, not at the expiration of this period.
- That a LEC must provide concrete, quantifiable proof that its requested suspension or modification is necessary to avoid a "significant adverse economic impact" under §251(f)(2)(A); that is, that the impact is "measurably large" (Appendix A, ¶ 284; Appendix C, ¶ 279). The Commission should take

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ILEC as either part of the wholesale long distance charges or passes on the actual access expense directly. In either situation, the ILEC is responsible for these costs.

[18] *See, e.g.*, *Atlas Telephone Co. v. Corporation Commission of Oklahoma*, 400 F.3d 1256 (10th Cir. 2005); *Mountain Communications v. FCC*, 355 F.3d 644 (D.C. Cir. 2004).

this a step further by requiring that any ILEC suspension or modification analysis be performed at the "corporate parent" level, including all of its regulated and unregulated operations, rather than at the smaller affiliate level. ILECs should not be allowed to avoid their obligations by undergoing an analysis at the small affiliate level.

- That the impact of a requested suspension or modification be measured across all users of telecommunications (Appendix A, ¶ 284; Appendix C, ¶ 279). Any alleged detrimental impact on the requesting ILEC must be balanced against the offsetting positive benefits that may accrue to competitive carriers and other parties.
- That the State commission "must consider the full economic impact on the LEC of all the comprehensive reforms we adopt" (Appendix A, ¶ 285; Appendix C, ¶ 280). Determining the complete economic impact on the LEC must involve all LEC revenue sources and all of the ILEC's corporate affiliates.
- That any suspension of or modification to reciprocal compensation rules and requirements must be symmetrical (whatever relief the ILEC receives is also provided to other LECs and CMRS providers that exchange traffic with the LEC) (Appendix A, ¶ 289; Appendix C, ¶ 284). Such a mirroring rule helps to ensure a level playing field and will reduce disputes, arbitrage and transaction costs (*id.*).
- That the required "fresh look" by a State commission be completed by the one-year anniversary date of the grant of the suspension or modification (Appendix A, ¶ 290; Appendix C, ¶ 285). A LEC that wants to extend a suspension/modification should file a request for extension 180 days before the one-year anniversary so that the state can determine, by the one-year anniversary date, whether the suspension/modification continues to satisfy the statutory test in light of possible changes in circumstances.

III. CERTAIN USF REFORMS CAN AND SHOULD BE IMPLEMENTED IMMEDIATELY.

Preserving and advancing universal service is one of the primary imperatives of the FCC. To meet this goal, the Commission can and should immediately implement certain major reforms to the universal service program: it should examine high-cost distributions to all recipients to "right size" the high-cost USF and to target such support where it is genuinely needed; and it should adopt a numbers/connections-based methodology to stabilize and rationalize USF contributions. The Commission has developed a voluminous record in both these areas, and it has sufficient information to make these decisions today.

The record associated with other universal service issues teed up in the instant proceeding is not nearly as robust. The Commission must obtain more information and flesh out more details on a reverse auction plan, and on competitive eligible telecommunications carrier (ETC) support, before it can adopt either approach as a replacement or supplement to the identical support rule. For reasons of equity, the Commission should retain the identical support rule until such time as it has adopted a reasonable mechanism to govern distribution of high-cost support to CETCs.

A. The FCC Must Carefully Examine Support to All High-Cost USF Recipients to Ensure A Sustainable, Competitively Neutral Fund.

Over a decade ago, the Commission, in compliance with its mandate under §254(b) of the Act, identified and espoused a number of bedrock universal service principles. Chief among these principles was ensuring that the USF be viable and sustainable,[19] and that universal service programs be competitively and technologically neutral.[20] To satisfy these bedrock principles, any high-cost USF reform initiative must involve careful scrutiny of USF distributions to *all* recipients, not just a particular class of

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[19] *See* 47 U.S.C. § 254(b)(5) ("There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service").

[20] *See, e.g., Federal-State Joint Board on Universal Service First Report and Order*, 12 FCC Rcd 8776, 8801 (¶ 47) (1997) ("Universal service support mechanisms and rules should be competitively neutral"); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, 12 FC Rcd 15639, 15658 (¶ 42, footnotes omitted) (1997) ("disparity in the treatment of classes of providers violates the requirement of competitive neutrality [in Section 254(b)] and undermines the pro-competitive purpose of the 1996 Act"); *see also, Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 616 (5th Cir. 2000) (the universal service program "must treat all market participants equally....

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carrier or category of ETC. Any proposal which focuses (favorably or unfavorably) exclusively or excessively on a particular category of ETC is discriminatory and anti-competitive, and could jeopardize the benefits of competition and the sustainability of the high-cost fund.

To help ensure that the high-cost USF is targeted, sustainable, and competitively neutral, Sprint Nextel recommends that the Commission take the following actions: it should "right size" and then cap rather than freeze or otherwise guarantee ILEC support; it should adopt high eligibility standards for any carrier seeking revenue replacement support from the universal service fund; and it should retain the identical support rule, or, barring that, it should give CETCs a reasonable opportunity to make an alternative showing to justify their request for high-cost support.

1. ILEC High-Cost Support Should Be Targeted and "Right Sized" Before It Is Capped.

In the Appendix A (¶ 14) and C (¶ 14) versions of the draft item, the Commission has proposed to cap the total amount of high-cost universal service support to CETCs and price cap ILECs.[21] Rather than guaranteeing high-cost support to the ILECs for the next five years at 2008 levels, the Commission must first "right size" the ILEC fund to ensure that any future support is provided in a targeted fashion (only where such support is necessary).

[T]his principle is made necessary not only by the economic realities of competitive markets but also by statute.").

[21] In Appendix C, the Commission has proposed not only to exempt rural rate-of-return ILECs from the high-cost cap, but also to increase their support through a new supplemental ICLS fund. As discussed in Section III.A.2 below, this give-away to the rural rate-of-return ILECs is unnecessary, anti-competitive, and fiscally irresponsible, and

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Under the Commission's proposal, ILECs that commit to deploying broadband Internet access throughout their supported areas in five years will continue to receive their current levels of support (Appendix A, ¶ 20; Appendix C, ¶ 20). Furthermore, each ILEC's individual annual high-cost support is frozen at its December 2008 level, annualized (Appendix A, ¶ 16; Appendix C, ¶ 16). This approach is seriously flawed for several reasons.

First, the Commission has extended this remarkable offer to ILECs without knowing how much support might be needed to meet their broadband deployment commitment. The Commission does not know how widely the ILECs have already deployed broadband Internet access throughout their service areas, or how long and how much it would cost the ILECs to achieve 100% deployment. ILECs received approximately $25.1 billion in federal high-cost universal service support between 1999 - 2007,[22] and another $3.1 billion in 2008,[23] a large portion of which was spent to upgrade their networks to accommodate broadband services. It is entirely possible that the bulk of the necessary infrastructure investment has already been made,[24] and that the ILECs have more than recovered their broadband investment costs from their unregulated service

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should be rejected. Sprint Nextel addresses high-cost support to CETCs in Section III.A.3 below.

[22] *Universal Service Monitoring Report 2007*, CC Docket No. 98-202, Table 3.2.

[23] USAC Report HC-01.

[24] For example, the National Telecommunications Cooperative Association (NTCA) reports the results of a survey of broadband rollout by its members, the 2008 version of which is available online at http://www.ntca.org/images/stories/Documents/Advocacy/SurveyReports/2008ntcabroadbandsurveyreport.pdf. Figure 2 on page 8 of the report shows that NTCA members already offer 768K-1.5M service (the Commission's proposed Tier 1 broadband) to 83% of their customers, 1.5M-3M service (the propopsed Tier 2 broadband) to 58% and 3M+ service (the proposed Tier 3 broadband) to 46% of their customers.

revenues. Under these conditions, promising to subsidize the ILECs at current levels for at least the next five years only inflates (in fact, bloats) the USF unnecessarily.

Second, freezing individual ILEC high-cost support at 2008 levels makes no sense given steadily declining ILEC access line counts.[25] The existing ILEC high-cost support mechanism already insulates ILECs from competitive losses – if they lose access lines, they receive more support per line so that their total support remains stable – and this proposal exacerbates the pro-ILEC competitive bias. This proposal is especially disturbing given the Commission's punitive determination to reduce or even eliminate high-cost support to CETCs over the same time period without providing CETCs a reasonable opportunity to make an alternative showing to justify their continued support. (And, of course, one reason why wireless CETC high-cost line counts have been increasing is that consumers are subscribing to wireless services in steadily increasing numbers.)

Third, existing ILEC high-cost support is excessive and not based on ILECs' actual costs. Two of the largest components of federal high-cost USF to price cap carriers -- Interstate Access Support (IAS), the $650 million fund that was established to reimburse carriers for access charge reductions associated with the CALLS plan, and Interstate Common Line Support (ICLS), the fund established to reimburse carriers for access charge reductions associated with the MAGS plan – were established based on past ILEC access revenue (not cost) levels, and thus have no relationship to actual per

[25] *See, e.g., Universal Service Monitoring Report 2007*, Table 3.18 (5.38% decline in ILEC high-cost loops from 2004-2005). Total ILEC access lines have declined every year from 2000-2006, from 187.6 million to 140.0 million (*see* FCC Industry Analysis

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line costs. Another of the elements – high cost model support – is based on a model which has not been updated or scrutinized for years and which fails to capture the efficiencies of modern technology and industry consolidation. HCLS (high cost loop support) provided to rural carriers remains based on embedded costs, even though those rules were originally scheduled to expire in June 2006.[26] And Local Switching Support is based on arbitrary thresholds, factors and allocations.

For the Commission to guarantee existing high-cost subsidies to the ILECs, uninterrupted for the next five years, without regard to actual need, is obviously contrary to the public interest. This proposal should therefore be rejected.

2. The Commission Should Not and Need Not Use the USF to Guarantee Revenue Neutrality.

As the Commission has correctly noted (*see, e.g.*, Appendix A, ¶ 311), although implementation of a unified terminating rate will reduce some carriers' access and reciprocal compensation revenues, many of these carriers should be able to recoup most if not all of these reduced revenues through existing non-regulated revenues and/or higher subscriber line charges. Requiring a carrier to recover its costs from its own subscribers rather than from its competitors is economically rational, and Sprint Nextel applauds the Commission for its apparent willingness to take this long-overdue step.[27]

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and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, August 2008, Table 7.1).

[26] *Federal-State Joint Board on Universal Service*, 21 FCC Rcd 5514 (2006) (extending embedded cost support mechanism for rural carriers until such time as the Commission concludes its rural review in CC Docket No. 96-45).

[27] The caps on federal subscriber line charges have remained unchanged since 2003.

Although Sprint Nextel opposes using the USF to guarantee any carrier's revenues, we do appreciate the Commission's attempt to ensure "that any new universal service subsidies are targeted carefully to situations where they are most crucially needed" (*see, e.g.*, Appendix A, ¶ 313). In particular, Sprint Nextel supports the Commission's proposals to require that price cap carriers requesting additional universal service support show all their costs and revenues, both regulated and non-regulated (*id.*, ¶ 314), and to exclude from any revenue replacement USF any ILEC whose retail rates are deregulated (*id.*, ¶ 320). To further minimize any new burdens on the USF, the Commission should adopt an additional standard which limits requests for support to revenue losses resulting directly from the companion intercarrier compensation reforms. There is nothing in the Act which expands the mission of the USF to guaranteeing a revenue stream to high-cost support recipients generally, much less to a particular class of carriers. It is thus entirely appropriate for the Commission to adopt stringent eligibility standards for any carrier seeking revenue replacement support from the USF.

The Commission's proposed eligibility requirements appropriately recognize that LEC networks are used to provide many services other than switched traffic termination – including switched traffic origination, special access (for which certain LECs earn triple-digit rates of return), local service (including unregulated optional features such as caller ID), Internet access and other data services, wireless services, and video distribution – and that LECs have many sources other than co-carriers to generate a normal (or better) profit. That LECs are taking full advantage of retail rate deregulation to increase their rates is borne out by a recent NASUCA survey, which found "'minimal' (8% per year) to 'massive'" rate increases in all but two of the (responding) jurisdictions that have deregulated basic, non-basic, or intraLATA toll rates.[28] Clearly, few if any ILECs need to rely on the high-cost universal service fund or new "access replacement" mechanisms to earn a reasonable return.

Despite the Commission's general commitment to target universal service support "to those companies whose reduced intercarrier compensation revenues truly are needed to continue providing quality service at affordable rates" (*see, e.g.*, Appendix C, ¶ 309), it has proposed to give rate-of-return incumbent LECs hundreds of millions of dollars of additional USF subsidies per year. Under this proposal, rural interstate rate-of-return carriers would receive USF support sufficient to compensate them "for all of the revenues lost as a result of the mandated reductions in intercarrier compensation rates that are not otherwise recoverable through increase in SLCs" (*id.*, ¶ 320). Rural rate-of-return LECs would not be subject to the kind of eligibility showing required of price cap LECs seeking additional universal service subsidies (*id.*, ¶ 312). In addition, these RLECs would receive up to $1.5 billion in "supplemental" ICLS subsidies over five years to compensate them for "unrecoverable revenue losses attributable to losses in access lines and interstate and intrastate minutes of use, using 2008 as a base year" (*id.*, ¶ 321). Prior to year five, the Commission would conduct a proceeding "to determine if modifications [to the supplemental ICLS plan] are required" (*id.*). This massive two-pronged give-away is blatantly anti-competitive and jeopardizes the sustainability of the high-cost fund, and should be rejected.

There is no reason to assume that rural rate-of-return carriers will be unable to earn a normal profit absent additional USF support. These RLECs, like price cap LECs,

[28] *See* NASUCA 2008 Rate Survey released November 18, 2008.

use their networks to provide many services other than switched traffic termination, including but certainly not limited to unregulated vertical features, Internet access and other data services, and video services,[29] and thus have many revenue sources contributing to their corporate profits. Indeed, the fact that an ILEC is subject to rate of return regulation does not mean that it is limited to an 11.25% return on its regulated services. If a rural rate-of-return ILEC's tariffs are allowed to go into effect without suspension and investigation (that is, if the tariff is "deemed lawful"), as occurs in the majority of cases, such ILEC is then allowed to retain any earnings it makes during the monitoring period; it is insulated from any refunds even if it earned supracompetitive returns far in excess of the authorized maximum. Moreover, rural ILECs subject to Section 61.39 of the Commission's rules may use their historic cost and demand quantities to set their interstate access rates, even if those costs and demand quantities turn out to bear little or no relation to actual quantities for the tariff period. Certain of these RLECs have avoided the true-up process required by Section 61.39 (and thus retained all overearnings) by joining the NECA pool prior to the true-up deadline. Given these factors, the Commission should require rural rate-of-return LECs to show (using actual data) that, absent additional USF support, they would be unable to make a normal profit at the corporate level.

Even more egregious than compensating rural rate-of-return LECs for alleged revenue losses associated with intercarrier compensation reform, regardless of their profitability, is the proposal to compensate them for *any* loss in access lines or minutes.

[29] For example, the TDS Telecom LECs offer bundled voice (local, long distance and several calling features), Internet, digital TV, and data services and networking (*see*

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The proposed supplemental ICLS fund -- $1.5 billion dollars over five years, with the possibility that the subsidy will be subsequently extended -- protects this class of carriers against economic downturns, competitive losses, conversions from switched to special access services, bad luck, and bad management – normal business risks faced by any service provider and completely unrelated to intercarrier compensation reform. Such a welfare program – paid for in large part by the customers of carriers such as Sprint Nextel that are ineligible to receive any support from this new supplemental ICLS fund – discourages efficiency, squelches competition, and threatens the viability of the USF. This proposal should be rejected outright.

3. CETC Support Should Continue to be Based on the Identical Support Rule, But If Such Rule is Eliminated, CETCs Should Have A Reasonable Alternative Means to Justify Requests for High-Cost Support.

The Commission has compiled an extensive record which clearly demonstrates why it should continue to provide high-cost universal service support to competitive eligible telecommunications carriers on the basis of the identical support rule (Section 54.307(a) of the Rules).[30] Sprint Nextel believes that the identical support rule remains the most efficient means of determining CETC support, particularly in light of the fact that one of the main reasons for eliminating this rule – to curb the growth in USF payments to CETCs – has been mooted by the Commission's imposition of a cap on total CETC distributions.[31] If, despite this record, the Commission nonetheless eliminates the

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[30] *See, e.g.*, comments filed by Sprint Nextel in WC Docket No. 05-337 and CC Docket No. 96-45 on April 17, 2008, p. 7.

[31] *High-Cost Universal Service Support*, WC Docket No. 05-337, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 23 FCC Rcd 8834 (2008).

identical support rule, it must provide CETCs with a reasonable alternative means of justifying their request for high-cost support. This support can be critical to a competitive carrier's ability to meet its on-going ETC obligations.[32]

The Appendix A (¶¶ 51-63) and C (¶¶ 51-52) versions of the draft item both propose to eliminate the identical support rule. Appendix A would require that a CETC seeking high-cost support must submit a cost study under which the CETC would divide its "total" costs, *excluding* spectrum, by *ILEC* line counts. If the resulting cost per line exceeds the national average ILEC loop cost (as measured by the High-Cost Proxy Model), the CETC will "be entitled to continue to receive support for the relevant service area, frozen at the amount of support, on a lump sum basis, that the competitive ETC received in 2008" (Appendix A, ¶ 55). Appendix C proposes to eliminate existing CETC support in equal steps over a five-year transition, and defers to a further proceeding a decision on "an appropriate universal service mechanism (or mechanisms) focused on the deployment and maintenance of advanced mobile wireless services in high-cost and rural areas" (Appendix C, ¶ 52). Unless and until the Commission adopts a high-cost advanced mobile wireless services fund, CETC high-cost USF is limited to the phased-down support amount.

The Appendix A CETC cost study proposal should be rejected outright. First, there is no basis for disallowing spectrum expenses. Spectrum is an indispensable asset, without which a wireless CETC cannot provide service. In this context, spectrum is

[32] In Sprint Nextel's experience, the total cost of building and operating a site in a high-cost area can exceed by a large margin the USF support received. Nonetheless, many CETCs have invested in high-cost areas on the good faith assumption that they would continue to have reasonable access to federal high-cost universal service support.

equivalent to a wireline carrier's subscriber loop or access line,[33] and should be as eligible for USF support as are wireline loop costs. Spectrum is also extremely costly -- some wireless carriers have spent *billions* of dollars to purchase or lease this asset. For the Commission to exclude this element (because spectrum is an "intangible asset" rather than a "facility or infrastructure" (Appendix A, fn. 148)) represents arbitrary and capricious ratemaking at its most outrageous.[34]

Second, the proposal to use ILEC line counts to determine CETC per line cost is utterly baffling. The Commission's stated intent in this portion of the draft item was to calculate a CETC's own cost per line. By definition, this requires that the CETC divide its own costs by its own line count – not the line count of another, totally unrelated carrier. While it is conceivable that the Commission might impose certain conditions around CETC line counts (for example, requiring a periodic true-up to adjust for under- or over-stated line count estimates), it makes no sense at all to require a CETC to use another carrier's line count.

Third, the Appendix A proposal apparently would cap a CETC's high-cost support at 2008 levels on an individual carrier basis. This would foreclose high-cost support to any CETC entering a service area after 2008, and penalizes CETCs that

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[33] Eleven years ago, the Commission stated that "to the extent that wireless providers use spectrum shared among users to provide service, we find that wireless providers offer the equivalent of single-party service when they offer a dedicated message path for the length of a user's particular transmission." *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 8810 (¶ 62) (1997).

[34] Sprint Nextel is aware of no Commission rule which restricts costs only to facilities or infrastructure. To the contrary, rate-of-return regulation incorporates numerous "intangible" cost elements such as overhead employee expenses, taxes and tax credits, cost of debt, and cost of equity. At the very least, wireless carriers should be able to include the cost of capital for their spectrum purchases.

increase their line counts. Even capping funding by ETC category has a disproportionate effect on CETCs vis-à-vis incumbent LECs, since CETC line counts have been increasing while ILEC line counts have been declining over time.[35]

Fourth, the Appendix A proposal apparently caps a CETC's high-cost support using an ILEC loop cost benchmark. Even assuming that the ILEC loop cost estimate is accurate – a highly problematic assumption – it is irrational to use a one-way benchmark. High-cost USF support should be provided to all ETCs based on the subsidy needed by the lowest-cost, most efficient provider. If a CETC's actual cost is higher than the ILEC's actual cost, then the CETC's support should be capped at the ILEC's level of support. Similarly, if the CETC's cost is lower than the ILEC's cost, then the ILEC's support should be capped at the CETC's level of support. To do otherwise would be to subsidize inefficiencies, yet this is precisely the outcome of the Appendix A proposal.

The Appendix C approach to determining CETC cost support is also flawed because it would phase out any CETC's high-cost support without first establishing an alternative means for determining support eligibility. While Sprint Nextel applauds the Commission's willingness (in this version of the draft item) to consider in a further proceeding an appropriate alternative CETC support mechanism, the elimination of

[35] Setting aside for the moment the impact of an increase in the total number of designated CETCs, wireless subscribership overall has been increasing significantly, while ILEC wireline customer counts have been declining. *See* FCC Industry Analysis and Technology Division, Wireline Competition Bureau, *Trends in Telephone Service*, August 2008, Table 7.1 (140.0 million ILEC access lines in 2006, down from the high of 187.6 million access lines in 2000) and Table 11.2 (238.2 million mobile wireless telephone subscribers in 2007, up every year since 2001 when there were an estimated 114.0 million mobile wireless subscribers).

existing support should be tied to adoption and implementation of this new mechanism.[36] To eliminate the existing CETC support mechanism without first establishing a replacement mechanism is unjust and unreasonable, and, given that the high-cost mechanism for ILECs remains in place without any phase-out, would constitute a blatant violation of the principle of competitive neutrality.

The Commission appears to be considering two approaches to replace the identical support rule: CETC cost studies and reverse auctions.[37] As discussed below, both of these approaches are flawed, and raise major policy and implementation issues that have yet to be addressed sufficiently. For the Commission to consider expanding cost-of-service regulation – with all of its widely acknowledged flaws[38] -- even as the industry becomes more competitive, is a step in the wrong direction.

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[36] As a condition of approval of the Sprint-Clearwire transaction, Sprint Nextel is obliged to phase out its existing CETC support in five steps beginning December 31, 2008. However, if the Commission adopts a different transition mechanism or a successor mechanism to the current equal support rule, then that rule of general applicability would apply instead. *See Sprint Nextel Corporation and Clearwire Corporation*, WT Docket No. 08-94, *Memorandum Opinion and Order* released November 7, 2008 (FCC 08-259), ¶¶ 107-108. If the Commission retains the identical support rule pending the outcome of a further notice, Sprint Nextel's phase-out of its existing CETC high-cost support should be linked to the generally applicable phase-out schedule established in that further proceeding.

[37] *See* Section III.B below for a discussion of the Commission's reverse auction proposals.

[38] *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, 4 FCC Rcd 2873, 2880 (¶ 12) (1989) (describing some of the deficiencies of rate-of-return regulation, including that it is "expensive and difficult to enforce, and create[s] incentives for carriers to pad their costs, forego efficient innovation, and cross-subsidize services in ways that harm ratepayers and the competitive process").

If, despite the serious problems associated with cost studies, the Commission persists in adopting this approach for distributing high-cost universal service support to competitive carriers, Sprint Nextel recommends that the Commission adopt the following parameters. First, the cost showing should reflect all of the expenses a CETC incurs to provide service. At a minimum, CETCs should be allowed to include the costs associated with the following network elements:

- Spectrum;
- Cell sites - antennas and related structures (towers or rooftops), power supplies, and base station transceiver systems;
- Back haul and transport;
- Base station controllers;
- Mobile switching centers;
- Intelligent network platform and signaling systems;
- National platforms such as the Home Location Register used for the delivery of traffic.

In the further proceeding appropriately contemplated in Appendix C, the Commission also should request comment on what other network costs, as well as what other types of non-network costs, may reasonably be included in the CETC's cost study.

Second, any per line cost showing should be based on the CETC's own line counts. As explained above, a CETC can compute its per line cost only if it uses its own demand quantities.

Third, the Commission should adopt a modified-two way identical support rule. Under this rule, high-cost support provided to any ETC in a given study area is based on the most efficient, lowest-cost service provider. Thus, if the CETC's per-line cost is lower than the ILEC's in a given study area, the high-cost support provided to both the

CETC and the ILEC is capped at the CETC's per line cost. Conversely, if the ILEC's per line cost is lower than the CETC's cost, the high-cost support provided to both the ILEC and the CETC is capped at the ILEC's per line cost. This approach encourages efficiency, is competitively neutral, and addresses the Commission's concern over the impact of high per-line CETC costs.[39]

The pressures on the federal high-cost universal service fund are significant and the public interest requires that responsible steps be taken to limit high-cost support only where it is genuinely needed. Therefore, Sprint Nextel recommends that both incumbent and competitive ETCs be required to demonstrate need in requesting high-cost support: they should show not only their relevant costs (if the Commission insists on a cost showing) but also their revenues from all of the services provided over the common network. Competition can thrive, and a sustainable high-cost fund can be assured, only if all unnecessary subsidies are eliminated.

B. The Reverse Auction Proposals Are Flawed and Incomplete, and Should Not be Adopted.

Sprint Nextel has supported in principle the use of reverse auctions to set the level of high-cost universal service support. In previous comments in this proceeding, Sprint Nextel noted that any reverse auction should: (1) be competitively and technologically neutral; (2) encourage competition by allowing for multiple winners; (3) require winning bidders to serve a geographic area that did not favor any individual bidder; (4) clearly specify all relevant obligations of the winning bidder, and (5) set the maximum level of

[39] The Commission expressed concern that a CETC's per line cost may be biased upward because of initial low line counts (*see* Appendix A, ¶ 54).

support at the current level of universal service support.[40] Taking these steps would ensure that the support given to carriers through the universal service fund is sufficient, as required by Congress in the 1996 Telecom Act, while not overburdening the carriers and their customers who contribute to the universal service fund.

In its proposed design for a universal service reverse auction (*see* Appendix A, ¶¶ 35-50), the Commission has included several features that will make it difficult for any carrier other than the incumbent LEC to successfully take part in the auction. The Commission must correct these features before it institutes a reverse auction.

The Commission proposes that the geographic area for which support will be determined in an auction shall be each ILEC's study area. Under this proposal, any carrier that wants to participate in the auction must be willing to serve the entire study area, either with its own facilities or using facilities purchased from another carrier. This is not competitively neutral.

The ILEC is the only carrier that is guaranteed to have to take no further steps to meet that requirement, giving it an obvious and substantial competitive advantage. Even assuming that they have the spectrum footprint to provide service throughout the ILEC's study area, wireless carriers may have to build additional towers to ensure that they can serve all customers in the service area. Similarly, cable telephony providers' serving areas are unlikely to fully overlap with the ILEC's serving area. In large metropolitan areas, there may be several cable telephone providers, and even if a cable telephony provider does fully cover a given city and its surrounding areas, it is unlikely that it provides the cable service in every city served by the ILEC. By selecting the ILEC's

[40] *See* Sprint Nextel Comments, WC Docket 05-337, filed May 31, 2007 at 2-4.

study area as the geographic area that auction winners must serve, the Commission has ensured that any provider other than the ILEC will face additional and in many cases substantial costs. The ILEC will be able to serve the relevant geographic market by definition, while any other possible auction participant will have to incur additional cost to meet this arbitrary requirement. This is not competitively neutral.

This problem is further exacerbated by the Commission's proposal for transitioning support to any winner of the auction other than the ILEC.[41] The Commission proposes to allow the ILEC that is currently receiving support to identify the areas for which it receives the support, and then the winning bidder's support will be reduced to the extent that it is unable to immediately serve those areas, with the ILEC retaining support for those designated areas.[42] Absent specific instructions from the Commission on how the ILEC is supposed to identify these areas, the potential for abuse here seems obvious – the ILEC could simply identify high cost areas as those which it believes the auction winner could not presently serve. In addition, it is unclear what level of support the Commission intends that the ILEC would retain. For instance, if the ILEC was receiving an average of $1 per line for all of its lines and then identified 10 percent of its lines as the high cost lines for which it received support, meaning that for that 10 percent of its lines it was receiving $10 of support per line, would the ILEC retain $1 or $10 for each of the lines that the new auction winner could not serve, or would it retain

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[41] It is unclear in the Commission's proposed orders whether the transition process described here applies any time there is a change from one auction winner to another or just if a non-ILEC takes support from the ILEC in the first auction. In either case, the problem with the Commission's proposal is the same.
[42] *See* Appendix A and Appendix C at ¶ 41, Appendix B at ¶ 27.

support at the (presumably lower) level bid by the auction winner? At a minimum, the Commission must specify how the ILEC designates the areas for which it receives support, and what level of support it retains for those areas.

Even if a carrier other than the ILEC manages to overcome its cost disadvantage from having to serve all customers in the ILEC's study area, it will then face the additional cost burden of not receiving the support needed to serve those areas until it has the plant in place to serve those areas. The Commission is placing non-ILECs in a Catch-22 situation in which they must build plant to serve all high cost customers that the ILEC can serve in order to get support, but cannot get the support needed to build the plant to serve those customers until they have built plant to serve them. This will make it very difficult for non-ILECs to participate meaningfully in the auction.

The Commission also proposes to allow an auction winner to transfer the support it receives under the auction, subject to Commission review and approval, either by sale to or purchase by another company. The Commission does not specify, however, what portion of the support amount would be transferred if an auction winner sold a part of its study area. For example, an auction winner might sell off the 10 percent of its lines that were its high cost lines, as in the example given above. It is not clear under the Commission's proposal whether the selling company would give up all its support, or just 10 percent of its support. In this example, it seems clear that the selling company should transfer all of its support to the purchasing company, but the real question is how the selling company would identify what portion of the support it receives goes with which lines. The Commission must resolve this issue in designing its reverse auction.

In addition, the Commission proposes generally to award support to the company that bids the lowest amount of support. The only exception to this general decision is in the Commission's proposal to require auction winners also to provide broadband. In the auction proposal for that requirement, the Commission proposes to first select the bid(s) that offer the highest broadband speed, and then select the lowest bid that offers that highest speed. The Commission has not explained why broadband speed should trump cost. The only justification attempted by the Commission is that it does not wish to settle for lesser speeds in higher cost areas.[43] Since the minimum broadband speed required under this proposal is set at 768K, which is generally what DSL and 3G wireless services are capable of achieving, this should hardly be considered a "lesser" speed. In addition, given the overall cap on the fund proposed by the Commission, subsidizing higher speeds (at higher cost) in some areas may mean that there is less money available in other areas that have a higher cost to achieve any speed. The Commission should first select the lowest bid, and then select the highest speed that can be achieved at that lowest bid. This will ensure that all areas can meet at least a minimum speed (which is in fact a relatively high speed), and will allow for more money to be spent in areas that are higher cost to serve.

Finally, in designing its reverse auction, the Commission should always be mindful that auctions can fail, *i.e.*, there may be only one or even no bidder. If there is only one bidder, there will be no incentive for that one bidder to reveal its true cost in the auction and the bid will be higher than necessary to provide service. If no bidders show up, the auction will also reveal nothing about the cost of providing service. The

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[43] *See* Appendix A at ¶ 44.

Commission protects against bids being too high by setting the current level of support as the reserve price in the auction. If no bidders enter the auction, the Commission proposes to "re-examine" the study area to determine what changes should be made to get a carrier to serve that area. The better solution would be for the Commission to ensure that its auction design allows for the maximum participation by all types of carriers, as described above. Selecting the parameters of the reverse auction so that they do not automatically favor one potential participant will maximize carriers' incentives to take part in the auction, and will ensure that all necessary and sufficient support will be identified for the areas that truly need it.

C. The Commission Should Adopt with Certain Modifications Its Proposed USF Contribution Methodology Based on Numbers and Connections.

In the FNPRM, the Commission seeks comment on two proposals to reform the Universal Service Fund assessment methodology. Specifically, the Commission requests comments on one proposal, set forth in Appendices A and C, that would introduce contributions based on telephone numbers for residential customers and continue on an interim basis the revenue-based contribution methodology for business customers until an alternative methodology can be thoroughly vetted. The second proposal, set forth in Appendix B, would introduce contributions based on telephone numbers for all customers; in addition, business services would be assessed $5.00 for any connection up to 64 kbps and $35.00 for any connection 64 kbps and above.[44] The carrier providing service to the end-user would collect and remit the revenue to USAC. Under both proposals, certain exceptions are made, for example, for prepaid wireless services.

[44] Appendix B, ¶ 81.

Since the Commission originally adopted the revenue-based USF contribution system to implement section 254 of the Telecommunications Act of 1996,[45] the telecommunications industry has changed dramatically. Over that period of time, assessable interstate and international revenues have decreased, while universal service disbursements have increased. Sprint Nextel agrees with the Commission's assessment that "[d]eclines in assessable contribution revenues combined with growth in universal service disbursements have increased the contribution factor applied to determine universal service contribution amounts. This upward pressure jeopardizes the stability and sustainability of the support mechanisms, demonstrating the need for long-term fundamental reform of the contribution methodology."[46] Sprint Nextel also agrees that "interstate end-user telecommunications service revenues are becoming increasingly difficult to identify as customers migrate to bundled packages of interstate and intrastate telecommunications and non-telecommunications products and services."[47]

Recognizing that the current contribution methodology is broken, the industry generally has come to embrace a simpler contribution methodology based on numbers and connections. It is expected that this assessment approach will provide stability in the rapidly changing telecommunications marketplace, and that it can be adapted to changes so as to maintain contributions that are competitively and technologically neutral.

As discussed below, Sprint Nextel supports the reform proposal set forth in Appendix B because Sprint Nextel believes that this proposal is fair and equitable to all

[45] 47 U.S.C. § 254.
[46] Appendix B, ¶ 41, footnotes omitted.
[47] Appendix B, ¶ 42.

customers and providers. If adopted, it would result in consumer assessments that are less likely to fluctuate and that are more understandable than the current recovery mechanism. However, Sprint Nextel suggests several modifications to the proposal. First, in order to maintain parity across technologies, telephone numbers or connections that are associated with the provision of an Internet access or information service, and not used for interconnected voice, should not be assessed a USF contribution charge. Second, in order to ensure competitive and technological neutrality, the Commission's proposed definition of "Assessable Numbers" must be modified. Third, the Commission should require quarterly (rather than monthly) reporting, and adopt a "collect and remit" system, so that carriers are not required to pay on Assessable Numbers for which they do not receive compensation. And, fourth, the transition should be at least one year from the date of the order adopting the change in methodology is released.

1. A Level Regulatory Playing Field Requires an Exception for Telephone Numbers Used to Provide Wireless Internet Access Services.

Section 254(d) mandates that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable and sufficient mechanisms established by the Commission to preserve and advance universal service."[48] The Commission, under its permissive contribution authority, may require contributions from "[a]ny other provider of interstate telecommunications ... if the public interest so requires."[49] Under its permissive authority, the Commission determined that providers of

[48] 47 U.S.C. §254(d).
[49] *Id.*

interconnected VoIP services must contribute into the fund. In its order, the Commission espoused the principle of "competitive neutrality" "mean[ing] that 'universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."[50]

In its proposal in Appendix B, the Commission has stated that it "has already begun to recognize the need to create a level regulatory playing field."[51] In order to achieve that "level regulatory playing field" under the new assessment methodology, exceptions undoubtedly will be required.

One such exception must be made for wireless broadband Internet access that uses telephone numbers as a routing tool. For example, Sprint Nextel uses telephone numbers to identify the broadband cards used in the provision of its 3G wireless broadband Internet access service. The Commission has already found that this broadband Internet access service is exempt from USF contributions. Specifically, in finding that broadband access to the Internet over wireless networks is an information service, the Commission stated "this approach is consistent with the framework that the Commission established for model Internet access service, wireline broadband Internet access service, and Broadband over Power Line (BPL)-enabled Internet access service and it establishes a minimal regulatory environment for wireless broadband Internet access service that promotes our goal of ubiquitous availability of broadband to all Americans."[52]

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[50] *In re Universal Service Contribution Methodology,* 21 FCC Rcd 7518 (2006), citing *Universal Service First Report and Order,* 12 FCC Rcd 8776, 8801, ¶ 47.
[51] Appendix B, ¶ 74.
[52] *In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks* ,WT Docket No. 07-53, Declaratory Ruling, (FCC 07-30), released March 23, 2007 (*Declaratory Ruling),* ¶ 2, footnotes omitted.

Excluding these numbers from the definition of "Assessable Numbers" would ensure the continued competitive neutrality among these types of broadband service.

In addition, telephone numbers used in the provision of wireless broadband Internet access services should be excluded from "Assessable Numbers" because they are not used for interconnection with the PSTN. In justifying its legal authority to require contributions based on numbers and connections, the Commission states that it has the authority to require providers, some of which are not "telecommunications carriers," to contribute because "all of these providers provide -- directly or indirectly -- some amount of interconnection to the PSTN, the network that universal service supports."[53] Although Sprint Nextel's 3G wireless Internet access service uses telephone numbers as a routing tool for the service, the Commission concluded that "mobile wireless broadband Internet access service itself is not an 'interconnected service' as the Commission has defined the term in the context of section 332." [54]

Thus, for wireless Internet access service, telephone numbers such as those used by Sprint Nextel do not "facilitate communication on interconnected networks based on a standardized system of identifiers -- telephone numbers,"[55] and therefore must be excluded from USF contributions in order to maintain a level playing field. To treat wireless broadband access to the Internet differently than other types of access to the Internet simply because it uses a telephone numbering system to establish a connection would create an unlevel playing field.

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[53] Appendix B, ¶ 50.
[54] *Declaratory Ruling*, ¶ 45, footnote omitted.
[55] Appendix B, ¶ 50.

2. The Definition of "Assessable Numbers" Must Be Revised to Ensure Competitive and Technological Neutrality.

The definition of "assessable numbers" that the Commission adopts as the basis for the USF contribution is critical to the viability and sustainability of the proposed methodology. The Commission states that it must be "technologically and competitively neutral, " and that "[a] consumer will pay the same universal service charge regardless of whether the consumer receives residential service from a cable provider, an interconnected VoIP provider, a wireless provider, or a wireline provider."[56] In addition, the definition must ensure that contributions will be equitable and non-discriminatory. In order to have competitive and technological neutrality, all Internet access services, including broadband access via DSL lines, BPL, or wireless, must be afforded the same treatment.

The Commission's proposed definition for the new category of numbers that will be assessed a USF contribution, "Assessable Numbers," is as follows:[57]

> A NANP telephone number or functional equivalent identifier in a public or private network that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telephone telecommunications network.

Sprint Nextel believes the proposed definition must be modified so that it is based on "telecommunications" rather than "communications," and limits "telecommunications" to those services the Commission determines to be subject to universal service obligations. As noted above, the Commission has permissive authority to demand USF contributions

[56] Appendix B, ¶ 55.
[57] Appendix B, ¶ 63, footnote omitted.

from "[a]ny other provider of interstate telecommunications ... if the public interest requires," and the Commission has found that it has the legal authority to apply universal service contributions to providers of telecommunications. The proposed definition expands the Commission's authority beyond its permissive authority to all "communications." The Commission has provided no basis for its proposed broad definition. Thus, Sprint Nextel suggests that the definition should be revised as follows:

> A NANP telephone number in a public or private network that is in use by an end user and that enables the end user (1) to receive telecommunications services from or terminate telecommunications services to an interstate public telecommunications network or (2) to receive telecommunications that the FCC has found to be subject to USF contribution obligations from, or terminate telecommunications to, a network that traverses an interstate public telephone telecommunications network.

Sprint Nextel supports the general policy that exemptions should be made for numbers that are not provided to end users. These would include numbers in a pending order (Appendix B, ¶ 67), ported numbers (¶ 68), numbers defined as Available, Administrative, Aging and Intermediate (¶ 69), non-working telephone numbers (¶ 70), and numbers used for routing purposes (¶ 71). These numbers are properly excluded because service providers cannot collect the USF contribution based on numbers that have not yet been assigned to "end users."

Sprint Nextel does not agree, however, with the Commission's possible inclusion of numbers that do not use the PSTN exclusively.[58] The Commission does not define these numbers, and the treatment of such numbers by service providers could lead to differences and inconsistencies in the application of USF assessments. To avoid

[58] Appendix B, ¶ 74.

inconsistent treatment of numbers, Sprint Nextel agrees with Google[59] and XO[60] that "Assessable Numbers" should be limited to NANP telephone numbers. If the Commission finds that other numbers are being used to avoid contributions to the USF, then it should address such numbers specifically at that time.

Because of the numerous exceptions to the definition of "Assessable Numbers," Sprint Nextel urges the Commission not to attempt to relate "Assessable Numbers" with other NRUF definitions. Any attempt to tie the definitions together will be difficult, if not impossible, and will lead to different interpretations. Thus, any audit of a service provider's "Assessable Numbers" must be based on an examination of the provider's customer lists and not on information provided to NRUF.

3. The Appropriate Rate Structure for the Connection-Based Contribution Must Be Established Separately.

Because "applying a pure numbers-based approach to business services would result in inequitable contribution obligations,"[61] the Commission "find[s] that business access connections should be assessed based on "Assessable Connections ... defined as an interstate telecommunications service or an interstate service with a telecommunications component that connects a business end-user's physical location (*e.g.*, premises) on a dedicated basis to the contributor's network or the PSTN."[62] The Commission proposes to set the rates at $5.00 for connections up to 64 kbps, and $35.00

[59] *See* Ex Parte Letter of Google, CC Docket No. 06-122 and CC Docket No. 96-45 (filed October 3, 2008) at 1.
[60] *See* Ex Parte Letter of XO, CC Docket No. 01-92, WC Docket No. 06-122, and CC Docket No. 96-45 (filed September 25, 2008) , Attachment at 11-13.
[61] Appendix B, ¶ 78.
[62] Appendix B, ¶ 81.

for connections above 64 kbps.[63] Neither the Commission nor AT&T (which proposed the rates) has provided any basis for them, and they were opposed by several parties. AT&T subsequently revised its original rate tiers based on "mbps" levels that do not correspond to traditional special access capacities and rates in an ex parte filing dated October 29, 2008.

Clearly, the details of the connections-based methodology must be carefully considered before USF assessments are imposed on business customers because the charges may have an unintended and significantly negative impact if not properly structured. The structure must also correspond to the way "Assessable Connections" are billed, so that the carrier responsible for contributing based on the "Assessable Connections" can properly identify the type of connection and bill the appropriate rate. Thus, because no supporting documentation has been provided, Sprint Nextel urges the Commission to provide an analysis of the proposed rate structure and the impact on customer groups and service categories and to seek further comment based on that information.

In addition, the Commission should address the treatment of broadband Internet access services. The Commission's definition of an "Assessable Connection" appears to contemplate that connections used to provide information services will be assessed the "Assessable Connection" charge. Specifically, by defining an "Assessable Connection" as "an interstate service with a telecommunications component," the Commission is including the transmission component of a broadband Internet access service or other

[63] Appendix B, ¶ 82. These are the rate tiers and the rates proposed by AT&T and Verizon in their Ex Parte Letter dated October 20, 2008.

information service in the category of "Assessable Connections." In its classification of wireline broadband Internet access service, the Commission "address[ed] two circumstances under which the statutory classification of the transmission component arises: the provision of transmission as a wholesale input to ISPs (including affiliates) that provide wireline broadband Internet access service to end users, and the use of transmission as part and parcel of a facilities-based provider's offering of wireline broadband Internet access service using its own transmission facilities to end users." [64] The Commission found that in the case of a wholesale input to ISPs, "the transmission component of wireline broadband Internet access service is a telecommunications service only if one of two conditions is met: the entity that provides the transmission voluntarily undertakes to provide it as a telecommunications service; or the Commission mandates, in the exercise of [its] ancillary jurisdiction under Title I, that it be offered as a telecommunications service."[65] In the second case, the Commission found that the use of the transmission component as a part of a facilities-based provider's offering of wireline broadband Internet access service to end users using its own transmission facilities "...is mere 'telecommunications' and not a 'telecommunications service.'"[66] In order to ensure competitive neutrality with respect to broadband Internet access services and other services where the dedicated connection may be used as "part and parcel of a facilities-based provider's offering" and as "a wholesale input" to competitive offerings, Sprint

[64] *In the Matter of Appropriate Framework for Braodband Access to the Internet over Wireline Facilities*, 20 FCC Rcd 14853, 14909 (2005).
[65] *Id.*, 14909-14910.
[66] *Id.*, 14910.

Nextel urges the Commission to exclude the transmission components of both from "Assessable Connections."[67]

In light of the difficulty of identifying the appropriate treatment of dedicated access facilities for USF contributions, Sprint Nextel recommends that the Commission maintain a list of services which are "Assessable Connections" and a list which are non-assessable. If a carrier provides a service which includes dedicated access that is not on the list, it should be required to review the service with the Commission to determine in which category it should be included and the service will be added to the appropriate list.

4. The Commission Should Modify Several of the Reporting Requirements.

i. The Commission Should Clarify Further Reporting Obligations For Assessable Numbers To Ensure Contribution by the Responsible Service Provider.

The Appendices use the NANP Assessable Numbers provided to an "end user" by a service provider as the basis for the proposed contribution methodology. The Commission proposes to maintain the current definition of "end user" as "any purchaser of interstate services that is not itself a direct contributor to universal service."[68] Sprint Nextel proposes to modify the definition to incorporate "Assessable Number" into the definition of "end user." Thus, an "end user" is "any purchaser of interstate services that receives an Assessable Number and that is not itself a direct contributor to universal

[67] Sprint Nextel assumes that "dedicated" access refers only to wireline access facilities. Wireless facilities, which permit access within a band of spectrum and allocation of sufficient amounts of spectrum to meet a customer's demand, would not be considered to be "dedicated" to a customer. If this interpretation is not correct, the Commission should define the term "dedicated."

[68] Appendix B, ¶ 65.

service." This definition should ensure a contribution based on the telephone number in instances where the provider of service to the "ultimate end user" is not a carrier that is required to contribute into the USF.

The Commission should also specify that the obligation to contribute does not revert automatically to the underlying service provider when the provider of a service "over which the Commission has exercised its mandatory or permissive authority under section 254(d)"[69] fails to contribute to the USF. The Commission should require a provider of service that obtains Assessable Numbers from another service provider and provides the Assessable Numbers to end users to certify to the underlying carrier that it is contributing to the USF based on the Assessable Numbers. Thereafter, the underlying carrier will not contribute into the fund based on such Assessable Numbers. If the service provider that obtains Assessable Numbers from another service provider fails to contribute, the service provider that obtained the Assessable Number remains responsible for the contribution, and the Commission should not seek the contribution from the underlying service provider.

The Commission should provide a standard certification form that all carriers would be required to use to claim exemption. With the introduction of this new contribution methodology, carriers should be required to submit their certification directly to their underlying carrier from whom the Assessable Numbers were obtained. Because some carriers use service obtained from a service provider for both internal use and resale, the certifying carrier must identify all applicable account numbers being used

[69] Appendix B, ¶ 65.

by that carrier for resale and therefore on which the per-number or per connection assessment should not be applied. The customer's certification should remain applicable until such time as the certifying carrier withdraws its certification.[70] Sprint Nextel agrees with AT&T that the entity from which the Assessable Number has been obtained has no further obligation to contribute into the USF for that customer.[71] The requirement in Section 64.1195(h) of the Commission's rules placing the burden on the underlying carrier should be removed.

ii. The Commission Must Permit A Mark-Up If It Requires Payment on All Numbers Irrespective of Whether Or Not the Carrier Receives Payment.

The Commission proposes to prohibit any mark-up for uncollectibles, stating in footnote 148 of Appendix B: "Because numbers-based contribution assessments will no longer be assessed based on revenues, contributors may not mark-up or otherwise adjust the Assessable Number per month residential contribution assessment in response to uncollectible revenues." This prohibition is unreasonable because carriers may still have uncollectible accounts. The uncollectible rate will undoubtedly be different – it will be the percentage of customers who do not pay, rather than the percentage of revenues that are not paid - but some customers will still fail to pay. Adopting this prohibition would result in service providers not being able to collect enough revenue from their end users to pay their required contribution.

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[70] *See* Ex Parte Letter of XO, CC Docket No. 01-92, WC Docket No. 06-122, and CC Docket No. 96-45 (filed September 25, 2008) , Attachment at p. 12 and Ex Parte Letter of AT&T and Verizon , WC Docket No. 06-122, and CC Docket No. 96-45 (filed October 20, 2008) at 4.
[71] *Id.*

In its Comments filed April 22, 2002, in response to the Commission's February 26, 2002 FNPRM in which it sought comments on replacing the current revenue-based methodology with a "collect and remit" system,[72] Sprint Nextel advocated a "collect and remit" system of contributions that permits carriers to reduce their contributions based on uncollectible amounts.[73] Under this process, carriers would identify the total amount of the fee billed each month. On a quarterly basis, the carrier would identify the amount of uncollectibles it is experiencing. The amount paid by the carrier would be the total billed amount less a percentage for uncollectibles. If the carrier's uncollectible amount is significantly higher than the average, an audit can be conducted. The average amount of uncollectibles for all carriers can be factored into the USAC's determination of the per-number charge.

Absent an adjustment in carriers' payments for uncollectibles, the Commission must permit carriers to adjust the per line rate to account for their uncollectibles and administrative costs. If necessary, the FCC should permit USAC to collect slightly more to cover fluctuations in the USF contribution revenue due to changes in uncollectibles and other revenue changes.[74] *See also* AT&T/Verison 10/20/2008 Ex Parte at 3.

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[72] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-166, 98-170, *Further Notice of Proposed Rulemaking and Report and Order*, 17 FCC Rcd 3752, 3796-7 (2002).
[73] *See* pp. 15-17.
[74] *See also* Ex Parte Letter of AT&T and Verizon , WC Docket No. 06-122, and CC Docket No. 96-45 (filed October 20, 2008) at 3.

iii. The Revenue-Based Contribution Methodology and Form 499 Submissions Must be Terminated.

Sprint Nextel strongly opposes the continuation of the revenue-based methodology, even on an interim basis. As the Commission is well aware, that methodology is broken. This is particularly true for business services. As AT&T and Verizon explained in their October 20, 2008 Ex Parte Letter:[75]

> Leaving business services on a revenues system would perpetuate all of the problems with the current mechanism (e.g., difficult distinctions between telecommunications and information services, and between interstate and other services, as well as varying interpretations of assessable services amount competitors) and also inject additional complexity by requiring providers to distinguish between residential and business telephone numbers and revenues.

Thus, the burden on carriers will be increased if they are required to continue to prepare the Form 499s, but in addition separate business from residential services. Furthermore, the introduction of the per-telephone number charge will have to be done in two stages, thereby significantly increasing the IT costs that will be required to apply the per-number charge.

The FCC currently uses the Form 499 as the basis of its assessment for Telecommunications Relay Service, North American Numbering Plan Administration, and the Local Number Portability Administration. Given the problems identified above with properly categorizing the revenues, Sprint Nextel suggests that the new USF contribution methodology should be applied as soon as possible to these other support mechanisms as well. In addition, carriers should be permitted to have one line item on

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[75] *Id.*, at 1.

their bills that recovers for all funds. When the new methodology becomes effective for all funds, the Commission should terminate the filing of the Form 499s.

iv. Reporting Should be on a Quarterly Rather Than Monthly Basis.

The Commission proposes to require monthly reporting of numbers. Sprint Nextel suggests that monthly reporting is unnecessary for the smooth operation of a numbers- and connections-based methodology and that the reporting should be quarterly. Carriers currently are assessed based on their quarterly revenue projections, and there is not apparent reason to change to more frequent reporting. Line counts are generally stable, and the Commission and USAC will be able to forecast the total quantity of numbers and connections. Monthly reporting will be an added and unnecessary cost burden on reporting service providers. Sprint Nextel also recommends that a date be specified for reporting purposes, rather than all numbers active during the month (or quarter). For example, the Commission could require a count on the last day of the month, or the last day of the quarter. This will allow providers to take a snapshot at a particular point in time and report that number.

Consistent with quarterly reporting, Sprint Nextel urges the Commission to make changes to the per-number and per-connection rates on a quarterly basis. Monthly changes are likely to be confusing to customers. It will also be difficult for carriers to make changes to all their billing systems every month. Thus, quarterly change would minimize confusion and cost.

5. Transition Plan

The Commission is proposing a twelve-month transition to the new USF contribution methodology.[76] Without the specific details of the proposed methodology, it is difficult to determine the amount of time that carriers will require to transition from the current revenue-based methodology to a new methodology. Sprint Nextel has advocated a transition period that is as short as possible, but certainly no less than twelve months.

IV. CONCLUSION.

The Commission can and should implement long-overdue intercarrier compensation reforms immediately: begin a five-year transition to a unified, "additional cost'-based terminating rate; adopt triggers and certifications to discourage traffic pumping; clarify that IP-enabled services are not subject to access charges and affirm the Section 251 and 252 rights of telecommunications providers of IP-enabled services; reaffirm that transit is an obligation under Section 251(c)(2) and consider application of the "additional cost" standard to transit rates; and adopt standards relating to grant of "suspensions and modifications" of small LECs' Section 251 obligations. The Commission should also decide certain USF issues: it should "right size" the USF and avoid turning the USF into a revenue guarantee fund; adopt a numbers/connections-based USF contribution methodology; and maintain the identical support rule until such time as the Commission adopts a reasonable mechanism for competitive carriers to justify their request for high-cost support. By adopting these intercarrier compensation and universal service reform

[76] Appendix B, ¶ 102.

measures, the Commission will promote competition and help ensure a viable, competitively neutral universal service fund.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing comments of Sprint Nextel Corp. was filed electronically or via US Mail on this 26th day of November 2008 to the parties listed below.

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